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October 24, 2024

VIA ECF

The Honorable Valerie Caproni
 United States District Court
 Southern District of New York
 40 Foley Square, Room 240
 New York, New York 10007

Re: *Nike, Inc. v. StockX LLC, No. 22 CV 00983 (VEC) (S.D.N.Y.)*

Dear Judge Caproni:

Pursuant to the Your Honor's Individual Rule 5(B)(ii), the Stipulated Protective Order ¶ 14 (Dkt. No. 52), and the Court's November 6, 2023 Order (Dkt. No. 213), Plaintiff Nike, Inc. ("Nike") respectfully submits this request seeking the sealed treatment of its Confidential Information referenced or quoted in Nike's and Defendant StockX LLC's ("StockX") Motions for Partial Summary Judgment (Dkt. Nos. 255-264, 268-273, 277-283). Concurrently with the filing of this Letter-Motion, Nike is also filing, under seal, its Memoranda of Law and Exhibits in support of its Motion as well as StockX's Opposition thereto with both parties' proposed redactions highlighted for the Court's review. Nike's proposed treatment of its Confidential Information referenced or quoted in StockX's Motion and Nike's Opposition thereto will be filed with StockX's letter request.¹

Included in Nike's proposed sealings is the treatment of documents produced by Third-Party Michael Malekzadeh and designated pursuant to the Stipulated Protective Order (Dkt. No. 52) that have been treated accordingly. Additionally, Nike has proposed redactions to certain filings to shield personally identifying information. Nike does not object to StockX's proposed redactions and sealings for the Confidential Information that it designated pursuant to the Stipulated Protective Order.

Subject to the Court's approval, Nike proposes to redact the Confidential Information that it designated pursuant to the Stipulated Protective Order, identified in Appendix A to this Letter ("Nike's Proposed Redactions.")² Nike also proposes sealing, in its entirety, the Exhibits identified in Appendix B to this Letter ("Nike's Proposed Sealings.")

¹ For the reference of the Court, Nike's proposals are highlighted in green and StockX's proposals are indicated in yellow in all proposed sealings.

² Included and indicated in Appendix A is Nike's proposed redactions to shield personally identifying information, specifically to redact the names of third parties that are immaterial to the Parties' summary judgment motions. Courts in this Circuit have found such redactions proper. *See e.g., Valassis Commc'nns, Inc. v. News Corp.*, No. 17-CV-7378 (PKC), 2019 WL 10984156, at *2 (S.D.N.Y. Mar. 11, 2019) ("The redacted names and addresses of third parties were immaterial to News's motion for summary judgment and thus redaction of this information is warranted."); *Cardwell*



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Sealed treatment of Nike's Proposed Redactions and Sealings is appropriate in light of *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). Although “[t]he common law right of public access to judicial documents is firmly rooted in our nation's history,” this right is not absolute and courts “must balance competing considerations against” the presumption of public access. *Id.* (internal citation and quotation marks omitted). “[C]ourts in this District routinely seal documents to prevent the disclosure of a party's confidential or competitively sensitive business information.” *Regeneron Pharm., Inc. v. Novartis Pharma AG*, 2021 WL 243943, at *1 (S.D.N.Y. Jan. 25, 2021) (collecting cases). “[C]ourts may deny access to records that contain “sources of business information that might harm a litigant's competitive standing.” *CT Espresso LLC v. Lavazza Premium Coffees Corp.*, 2022 WL 443644, at *2 (S.D.N.Y. Feb. 14, 2022) (internal quotations) (collecting cases).

Nike's Proposed Redactions relate to the details of Nike's highly confidential anticounterfeiting and brand protection efforts, including Nike's anti-counterfeiting processes and procedures and proprietary brand protection tools as well as Nike brand protection's analyses of the harms that flow from the distribution of counterfeit goods. “[T]he details of [Nike's] anti-counterfeiting program include business information that might harm [its] competitive standing and reveal trade secrets if publicly disclosed.” *Fossil Grp., Inc. v. Angel Seller LLC*, 2022 WL 3347219, at *5 (E.D.N.Y. Aug. 12, 2022) (internal quotations omitted) (sealing “highly confidential brand protection anti-counterfeiting” information). Indeed, “certain of the information relevant to [Nike's] anti-counterfeiting efforts could be a useful roadmap for a would-be counterfeiter.” *Id.* (internal quotations omitted).

Nike's Proposed Redactions and Nike's Proposed Sealings, to the extent not directly related to its anti-counterfeiting strategy, are “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company's current business practices that a competitor would seek to exploit.’” *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (quoting *Encycl. Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y.1998)). “Courts applying the Second Circuit's *Lugosch* standard have recognized the sensitivity of confidential business strategies and practices, and have permitted the sealing of such information.” *PharmacyChecker.com LLC v. Nat'l Ass'n of Boards of Pharmacy*, 2022 WL 4956050, at *2 (S.D.N.Y. Aug. 26, 2022). Nike's Proposed Redactions and Proposed Sealings cover its “internal analyses” of business strategy and harm from counterfeiting, which, if revealed, ““might harm [Nike]’s competitive standing in the market.”” *W.J. Deutsch & Sons Ltd. v. Diego Zamora, S.A.*, 2022 WL 890184, at *2 (S.D.N.Y. Mar. 25, 2022) (quoting *New York v. Actavis, PLC*, 2014 WL 5353774, at *3 (S.D.N.Y. Oct. 21, 2014)).

v. Davis Polk & Wardwell LLP, No. 1:19-CV-10256-GHW, 2022 WL 17175759, at *2 (S.D.N.Y. Nov. 23, 2022) (“the motion to seal is granted with respect to the redactions of third-party names and identifying information”).



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These redactions and sealing are “narrowly tailored to cover only the sensitive information that could lead to competitive disadvantage if disclosed.” *Id.* at *3.

Nike’s Proposed Sealing contains the type of confidential and sensitive business information that Courts routinely seal. *See Sec. & Exch. Comm’n v. Telegram Grp. Inc.*, 2020 WL 3264264, at *3 (S.D.N.Y. June 17, 2020) (“The demonstration of a valid need to protect the confidentiality of proprietary business information, such as internal analyses, business strategies, or customer negotiations, may be a legitimate basis to rebut the public’s presumption of access to judicial documents.”); *Playtex Prod., LLC v. Munchkin, Inc.*, 2016 WL 1276450, at *11 (S.D.N.Y. Mar. 29, 2016) (sealing exhibits related to *inter alia* “qualitative market research”). Indeed, this Court has previously granted Nike’s requests to seal similar confidential information. (*See* Dkts. 222, 238.)

Nike’s Proposed Redactions and Sealings have been applied judiciously and are narrowly tailored to shield only Confidential Information designated under the Stipulated Protective Order as containing “anticounterfeiting and brand protection measures, including methods used to identify counterfeit, grey market, and/or other unauthorized goods,” other commercially sensitive material, and personally identifying information. Accordingly, Nike respectfully requests that the Court grant Nike’s request to implement the limited, proposed redactions and sealing.

Respectfully submitted,

By: /s/ Tamar Y. Duvdevani

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Appendix A: Nike's Proposed Redactions

Dkt. No.	Document Description	Redaction Proposed
255	StockX's Opening Memorandum of Law in Support of its Motion for Summary Judgement	Redact Nike Confidential Information
256	StockX's Rule 56.1 Statement of Facts	Redact Nike Confidential Information
257-2	StockX's Opening Exhibit 2	Redact Nike Confidential Information
257-3	StockX's Opening Exhibit 3	Redact Nike Confidential Information
257-11	StockX's Opening Exhibit 11	Redact Nike Confidential Information
257-47	StockX's Opening Exhibit 47	Redact Nike Confidential Information
257-50	StockX's Opening Exhibit 50	Redact Nike Confidential Information
257-116	StockX's Opening Exhibit 116	Redact Nike Confidential Information
257-117	StockX's Opening Exhibit 117	Redact Nike Confidential Information
257-121	StockX's Opening Exhibit 121	Redact Nike Confidential Information
257-122	StockX's Opening Exhibit 122	Redact Nike Confidential Information
257-123	StockX's Opening Exhibit 123	Redact Nike Confidential Information
257-124	StockX's Opening Exhibit 124	Redact Nike Confidential Information
257-125	StockX's Opening Exhibit 125	Redact Nike Confidential Information
259	Nike Opening Memorandum of Law in Support of its Motion for Summary Judgement	Redact Nike Confidential Information
260	Nike Statement of Facts Statement of Facts	Redact Nike Confidential Information
260-1	Nike's Opening Appendix A	Redact Nike Confidential Information
261-40	Nike's Opening Exhibit 40	Redact Nike Confidential Information
261-41	Nike's Opening Exhibit 41	Redact Nike Confidential Information
261-56	Nike's Opening Exhibit 53	Redact Nike Confidential Information
261-99	Nike's Opening Exhibit 93	Redact Nike Confidential Information
261-109	Nike's Opening Exhibit 102	Redact Personally Identifying Information
261-112, 261-113	Nike's Opening Exhibit 104	Redact Personally Identifying Information
261-118	Nike's Opening Exhibit 109	Redact Nike Confidential Information
261-123	Nike's Opening Exhibit 114	Redact Nike Confidential Information
261-146	Nike's Opening Exhibit 137	Redact Nike Confidential Information
261-148	Nike's Opening Exhibit 139	Redact Nike Confidential Information
261-149	Nike's Opening Exhibit 140	Redact Personally Identifying Information
261-150	Nike's Opening Exhibit 141	Redact Personally Identifying Information
261-151	Nike's Opening Exhibit 142	Redact Personally Identifying Information
261-152	Nike's Opening Exhibit 143	Redact Nike Confidential Information
261-154	Nike's Opening Exhibit 145	Redact Nike Confidential Information
261-155	Nike's Opening Exhibit 146	Redact Nike Confidential Information
261-156	Nike's Opening Exhibit 147	Redact Nike Confidential Information

Dkt. No.	Document Description	Redaction Proposed
261-157	Nike's Opening Exhibit 148	Redact Nike Confidential Information
262	Joe Pallett Declaration	Redact Nike Confidential Information
262-1	Exhibit 1 to the Declaration of J. Pallett	Redact Nike Confidential Information
262-3	Exhibit 3 to the Declaration of J. Pallett	Redact Nike Confidential Information
262-5	Exhibit 5 to the Declaration of J. Pallett	Redact Nike Confidential Information
263-1	Exhibit A to Kammel Declaration	Redact Nike Confidential Information
263-2	Exhibit B to Kammel Declaration	Redact Nike Confidential Information
268	StockX's Memorandum of Law in Opposition to Nike's Motion for Summary Judgment	Redact Nike Confidential Information
269	StockX's Rule 56.1 Counterstatement of Facts	Redact Nike Confidential Information
271-1	StockX's Opposition Exhibit 1	Redact Nike Confidential Information
271-2	StockX's Opposition Exhibit 2	Redact Nike Confidential Information
271-7	StockX's Opposition Exhibit 7	Redact Nike Confidential Information
271-8	StockX's Opposition Exhibit 8	Redact Nike Confidential Information
271-9	StockX's Opposition Exhibit 9	Redact Nike Confidential Information
271-19	StockX's Opposition Exhibit 19	Redact Nike Confidential Information
271-23	StockX's Opposition Exhibit 23	Redact Nike Confidential Information
271-25	StockX's Opposition Exhibit 25	Redact Nike Confidential Information
271-26	StockX's Opposition Exhibit 26	Redact Nike Confidential Information
271-27	StockX's Opposition Exhibit 27	Redact Nike Confidential Information
271-28	StockX's Opposition Exhibit 28	Redact Nike Confidential Information
271-34	StockX's Opposition Exhibit 34	Redact Nike Confidential Information
271-35	StockX's Opposition Exhibit 35	Redact Nike Confidential Information
271-36	StockX's Opposition Exhibit 36	Redact Nike Confidential Information
271-38	StockX's Opposition Exhibit 38	Redact Personally Identifying Information
271-41	StockX's Opposition Exhibit 41	Redact Nike Confidential Information
271-43	StockX's Opposition Exhibit 43	Redact Personally Identifying Information
271-44	StockX's Opposition Exhibit 44	Redact Personally Identifying Information
271-56	StockX's Opposition Exhibit 56	Redact Nike Confidential Information
271-64	StockX's Opposition Exhibit 64	Redact Personally Identifying Information
271-80	StockX's Opposition Exhibit 80	Redact Nike Confidential Information
271-81	StockX's Opposition Exhibit 81	Redact Nike Confidential Information
271-82	StockX's Opposition Exhibit 82	Redact Nike Confidential Information
271-83	StockX's Opposition Exhibit 83	Redact Personally Identifying Information
271-86	StockX's Opposition Exhibit 86	Redact Nike Confidential Information
270	Nike's Memorandum of Law in Opposition to StockX's	Redact Nike Confidential Information
272	Nike's Rule 56.1 Counterstatement of Facts	Redact Nike Confidential Information
273-1	Nike's Opposition Exhibit 1	Redact Nike Confidential Information
273-48	Nike's Opposition Exhibit 47	Redact Nike Confidential Information

Dkt. No.	Document Description	Redaction Proposed
273-59	Nike's Opposition Exhibit 58	Redact Nike Confidential Information
273-101	Nike's Opposition Exhibit 99	Redact Nike Confidential Information
278	StockX's Response to Nike's Rule 56.1 Counterstatement	Redact Nike Confidential Information
280	Nike's Response to StockX's Rule 56.1 Counterstatement	Redact Nike Confidential Information
281-6	Nike's Reply Exhibit 154	Redact Nike Confidential Information
281-7	Nike's Reply Exhibit 155	Redact Nike Confidential Information
281-11	Nike's Reply Exhibit 159	Redact Nike Confidential Information
281-34	Nike's Reply Exhibit 182	Redact Nike Confidential Information

Appendix B: Nike's Proposed Complete Sealings

Dkt. No.	Document Description	Sealing Proposed
257-8	StockX's Opening Exhibit 8	Completely Seal Nike Confidential Information
257-13	StockX's Opening Exhibit 13	Completely Seal Nike Confidential Information
257-14	StockX's Opening Exhibit 14	Completely Seal Nike Confidential Information
257-17	StockX's Opening Exhibit 17	Completely Seal Nike Confidential Information
257-46	StockX's Opening Exhibit 46	Completely Seal Nike Confidential Information
257-49	StockX's Opening Exhibit 49	Completely Seal Nike Confidential Information
261-115	Nike's Opening Exhibit 106	Completely Seal Nike Confidential Information
261-116	Nike's Opening Exhibit 107	Completely Seal Nike Confidential Information
261-117	Nike's Opening Exhibit 108	Completely Seal Nike Confidential Information
261-135	Nike's Opening Exhibit 126	Completely Seal Third Party Designated Confidential Information
261-136	Nike's Opening Exhibit 127	Completely Seal Third Party Designated Confidential Information
261-137	Nike's Opening Exhibit 128	Completely Seal Third Party Designated Confidential Information
261-138	Nike's Opening Exhibit 129	Completely Seal Third Party Designated Confidential Information
261-139	Nike's Opening Exhibit 130	Completely Seal Third Party Designated Confidential Information
261-145	Nike's Opening Exhibit 136	Completely Seal Nike Confidential Information
261-153	Nike's Opening Exhibit 144	Completely Seal Nike Confidential Information
262-8	Exhibit 8 to the Declaration of J. Pallett	Completely Seal Nike Confidential Information
262-9	Exhibit 9 to the Declaration of J. Pallett	Completely Seal Nike Confidential Information
262-10	Exhibit 10 to the Declaration of J. Pallett	Completely Seal Third Party Designated Confidential Information
262-11	Exhibit 11 to the Declaration of J. Pallett	Completely Seal Third Party Designated Confidential Information
262-12	Exhibit 12 to the Declaration of J. Pallett	Completely Seal Third Party Designated Confidential Information
262-13	Exhibit 13 to the Declaration of J. Pallett	Completely Seal Third Party Designated Confidential Information
271-5	StockX's Opposition Exhibit 5	Completely Seal Nike Confidential Information
271-6	StockX's Opposition Exhibit 6	Completely Seal Nike Confidential Information
271-10	StockX's Opposition Exhibit 10	Completely Seal Nike Confidential Information
271-11	StockX's Opposition Exhibit 11	Completely Seal Nike Confidential Information
271-12	StockX's Opposition Exhibit 12	Completely Seal Nike Confidential Information

Dkt. No.	Document Description	Sealing Proposed
271-13	StockX's Opposition Exhibit 13	Completely Seal Nike Confidential Information
271-14	StockX's Opposition Exhibit 14	Completely Seal Nike Confidential Information
271-15	StockX's Opposition Exhibit 15	Completely Seal Nike Confidential Information
271-21	StockX's Opposition Exhibit 21	Completely Seal Nike Confidential Information
271-22	StockX's Opposition Exhibit 22	Completely Seal Nike Confidential Information
271-24	StockX's Opposition Exhibit 24	Completely Seal Nike Confidential Information
271-30	StockX's Opposition Exhibit 30	Completely Seal Nike Confidential Information
271-42	StockX's Opposition Exhibit 42	Completely Seal Nike Confidential Information
271-59	StockX's Opposition Exhibit 59	Completely Seal Third Party Designated Confidential Information
271-72	StockX's Opposition Exhibit 72	Completely Seal Nike Confidential Information
271-78	StockX's Opposition Exhibit 78	Completely Seal Third Party Designated Confidential Information
271-79	StockX's Opposition Exhibit 79	Completely Seal Third Party Designated Confidential Information
271-85	StockX's Opposition Exhibit 85	Completely Seal Nike Confidential Information
271-87	StockX's Opposition Exhibit 87	Completely Seal Nike Confidential Information
271-88	StockX's Opposition Exhibit 88	Completely Seal Nike Confidential Information
271-89	StockX's Opposition Exhibit 89	Completely Seal Nike Confidential Information
271-90	StockX's Opposition Exhibit 90	Completely Seal Nike Confidential Information
271-91	StockX's Opposition Exhibit 91	Completely Seal Nike Confidential Information
271-99	StockX's Opposition Exhibit 99	Completely Seal Nike Confidential Information
273-36	Nike's Opposition Exhibit 35	Completely Seal Third Party Designated Confidential Information
273-37	Nike's Opposition Exhibit 36	Completely Seal Third Party Designated Confidential Information
273-38	Nike's Opposition Exhibit 37	Completely Seal Third Party Designated Confidential Information
281-4	Nike's Reply Exhibit 152	Completely Seal Nike Confidential Information
281-5	Nike's Reply Exhibit 153	Completely Seal Nike Confidential Information
281-8	Nike's Reply Exhibit 156	Completely Seal Nike Confidential Information
281-9	Nike's Reply Exhibit 157	Completely Seal Nike Confidential Information
281-10	Nike's Reply Exhibit 158	Completely Seal Nike Confidential Information
281-28	Nike's Reply Exhibit 176	Completely Seal Third Party Designated Confidential Information
281-29	Nike's Reply Exhibit 177	Completely Seal Third Party Designated Confidential Information
281-30	Nike's Reply Exhibit 178	Completely Seal Third Party Designated Confidential Information

Dkt. No.	Document Description	Sealing Proposed
281-31	Nike's Reply Exhibit 179	Completely Seal Third Party Designated Confidential Information
281-32	Nike's Reply Exhibit 180	Completely Seal Third Party Designated Confidential Information
281-33	Nike's Reply Exhibit 181	Completely Seal Third Party Designated Confidential Information